

SEP 17 2003

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations
(Osage Beach, Missouri)

MB Docket No. 03-207
RM-10769

NOTICE OF PROPOSED RULE MAKING

Adopted: September 16, 2003

Released: September 24, 2003

Comment Date: November 17, 2003

Reply Comment Date: December 2, 2003

By the Chief, Video Division

1 The Commission has before it a petition for rule making filed by Timothy D. Lischwe ("Lischwe"), requesting the allotment of channel 49 to Osage Beach, Missouri.¹ Lischwe states that he will apply for channel 49, if allotted.

2 In support of his proposal, Lischwe states that Osage Beach is an incorporated community with its own mayor, police department and two independent schools districts. Lischwe contends the public interest would be served by the adoption of his proposal since it would enable Lischwe to provide the community of Osage Beach with its first local television service.

3. We believe Lischwe proposal warrants consideration. A staff engineering analysis indicates that Channel 49 can be allotted to Osage Beach with a plus offset consistent with the

¹ Lischwe initially filed his petition for rule making on January 31, 1995. In that petition, Lischwe requested a waiver of the requirements of the *Freeze Order* placed on facilities within 75 miles of the top-30 television markets. See, *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 FR 28346, published July 29, 1987. The Chief, Allocations Branch, dismissed Mr. Lischwe rule making petition in a letter dated April 27, 1995, finding that Mr. Lischwe had not provided sufficient grounds for granting his waiver request. Subsequently, the Chief, Policy and Rules Division, reinstated Mr. Lischwe rule making petition based on changes in circumstances. Those changes included the finalization of the DTV Table of Allotments and the opening of a filing window. See *Mass Media Bureau Announces Window Filing Opportunity Pending Applications and Allotment Petitions for New Analog TV Stations*, DA 99-2605. On November 22, 1999, the Commission released a *Public Notice* announcing a window filing opportunity for rule making petitioners to modify their requests. Mr. Lischwe was directed to modify his proposal to comply with the various DTV and other requirements described in the *Public Notice*.

minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules.² The coordinates for Channel 49+ at Osage Beach are 38-17-33 North Latitude and 92-34-24 West Longitude.

4. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u> | <u>Channel No.</u> | |
|-----------------------|--------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Osage Beach, Missouri | -- | 49+ |

5. The Commission's authority to institute rule-making proceedings, showings required cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before November 17, 2003, and reply comments on or before December 2, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Aaron P. Shainis
Shainis & Peltzman, Chartered
1850 M Street, NW
Suite 240
Washington, DC 20036
(Counsel for Timothy D. Lischwe)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b). See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

8. For further information concerning this proceeding, contact Pam Blumenthal, Media

² Our engineering studies indicate that if Lischwe proposal is granted, the applicant for channel 49+ at Osage Beach must provide co-channel protection to Class A station K49FC at St. Louis, Missouri. *See Section 73.613* of the Commission's Rules.

Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Attachment Appendix

APPENDIX

1 Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.). The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See Electronic Filing of Documents in Rule Making Proceedings, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S.

Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.